

United States Court of Appeals for the Federal Circuit

Rich Baranski,

Appellant,

v.

United States Patent and Trademark Office,

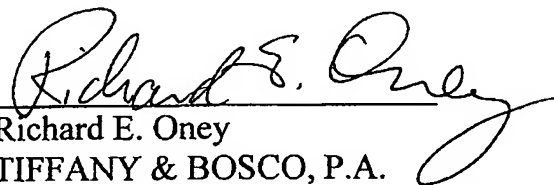
Appellee.

Notice of Appeal

Notice is hereby given that Rich Baranski hereby appeals to the United States Court of Appeals for the Federal Circuit from the Decision on Appeal, Appeal No. 2008-4844, U.S. Application No. 10/055,757, of the Board of Patent Appeals and Interferences for the United States Patent and Trademark Office, which was entered on January 12, 2009.

DATED this 13th day of March, 2009.

By


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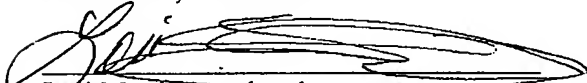
Proof of Service and Certificate of Mailing

Re: Rich Baranski v. United States Patent and Trademark Office
Notice of Appeal from Decision on Appeal of
BPAI Appeal No. 2008-4844 for U.S. Application No. 10/055,757
Attorney File No.: 12521-017

PROOF OF SERVICE PURSUANT TO FED. R. APP. P. RULE 25(d)

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Lori Martin, paralegal

March 13, 2009
Date of Signature

I hereby certify that three copies of the Notice of Appeal, a courtesy copy of the Decision on Appeal being appealed and a check in the amount of \$450.00 are being deposited on March 13, 2009 with the U.S. Postal Service "Express Mail Post Office to Addressee" (Express Mail Label No. EV689698445 US), postage prepaid and addressed to:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, D.C. 20439


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Lori Martin, paralegal

March 13, 2009
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,757	01/22/2002	Rich Baranski	12521-017	7325
48276 7590 01/12/2009 TIFFANY & BOSCO CAMELBACK ESPLANADE II, THIRD FLOOR 2525 EAST CAMELBACK ROAD PHOENIX, AZ 85016			EXAMINER LUGO, CARLOS	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICH BARANSKI

Appeal 2008-4844
Application 10/055,757
Technology Center 3600

Decided: January 12, 2009

Before TONI R. SCHEINER, DONALD E. ADAMS, and JEFFREY N.
FREDMAN, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 1-22, the only claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

The claims are directed to an adjustable door guide latch slot assembly for aligning a slidable door latch with a fixed door guide. Claims 1, 2, 11, and 19 are illustrative:

1. An adjustable door guide latch slot assembly for aligning a slidable door latch with a fixed door guide, the assembly comprising:

a striker plate having a latch opening therein, and a door guide adapted to retain a door therein such that the door can move slidably along a length of the guide when the door is retained in the guide, the guide including an inner surface and an opening therein, with said opening being larger than said striker plate latch opening, whereby said striker plate may be adjustably affixed directly to said door guide inner surface so that said striker plate latch opening aligns with said slidable door latch.

2. The adjustable latch slot assembly of claim 1, further comprising a recessed area on said door guide inner surface that is large enough so that said striker plate may be placed flat within said recessed area.

11. The adjustable latch slot assembly of Claim 1 further comprising a security device having a latch port for accepting said door latch whereby said security device is affixed to said adjustable striker plate to accommodate the position of said door latch.

19. An adjustable door guide latch slot assembly for aligning a slidable door latch with a fixed door guide, the assembly comprising:

a striker plate having a latch opening therein;

a door guide adapted to retain a door therein such that the door can move slidably along a length of the guide when the door is retained in the guide; the guide including an outer surface and an inner surface with a recessed area larger than said striker plate and having an opening therein extending from the inner surface to the outer surface, with said opening being larger than said striker plate latch opening; and

a security device having a latch receiving port, the security device extending out from the outer surface of the door guide,

whereby said striker plate may be placed flat against said door guide inner surface within said recessed area and may be adjustably affixed to said door guide inner surface so that said striker plate latch opening aligns with

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said slidable door latch and whereby said security device is affixed to said adjustable striker plate so that said latch receiving port aligns with both said striker plate latch opening and said slidable door latch.

The Examiner relies on the following prior art references to show unpatentability:

Bagley	US 2,124,970	Jul. 26, 1938
Collier	US 3,976,317	Aug. 24, 1976
Roth et al.	US 5,757,269	May 26, 1998

The rejections as presented by the Examiner are as follows:

1. Claims 1-10, 14-17, and 22 stand rejected under 35 U.S.C § 103(a) as unpatentable over the combination of Collier and Bagley.
2. Claims 11-13 and 18-21 stand rejected under 35 U.S.C § 103(a) as unpatentable over the combination of Collier, Bagley, and Roth.

We affirm.

FINDINGS OF FACT (FF)

1. Claim 1 is directed to an adjustable door guide latch slot assembly for aligning a slidable door latch with a fixed door guide. The claimed assembly comprises two elements: (1) a striker plate and (2) a door guide.

Claim 1 requires the striker plate to have a latch opening.

Claim 1 requires the door guide to include an inner surface that contains an opening that is larger than the striker plate latch opening. Claim 1 further requires that the door guide is adapted to retain a door and allow a door to move slidably along a length of the guide when the door is retained in the guide.

In addition, claim 1 recites, but does not require, an arrangement of the assembly, wherein the striker plate *may be* adjustably affixed directly to the inner surface of the door guide so that the striker plate latch opening aligns with the slidable door latch.

2. Claim 2 depends from and further limits the assembly of claim 1 to further comprise a recessed area on the inner surface of the door guide that is large enough so that said striker plate may be placed flat within the recessed area.

3. Collier teaches a “strike plate construction for use with a sliding glass door” (Collier, col. 1, ll. 61-63). For clarity we reproduce Collier’s Figure 1 below:

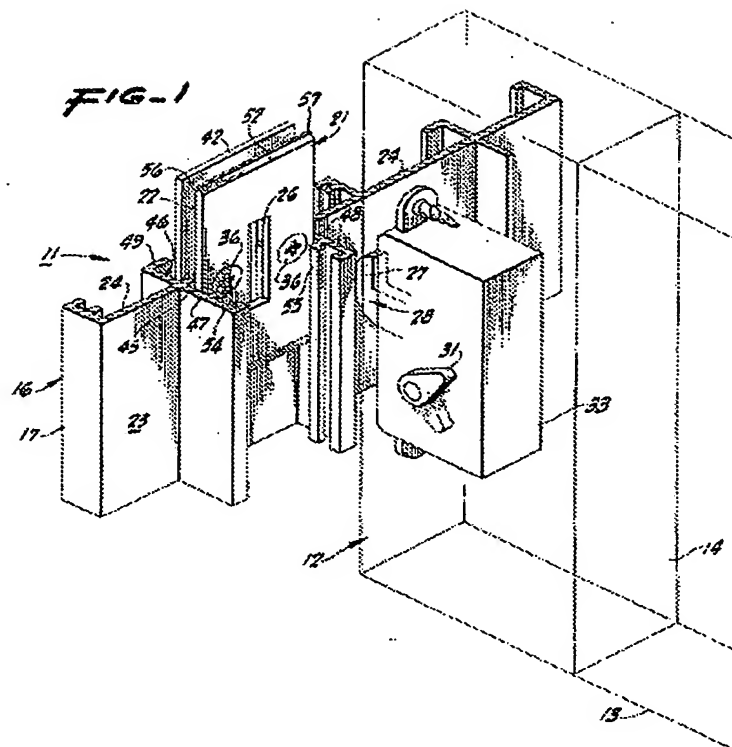


FIG. 1 is a fragmentary perspective view of a strike plate of . . . [Collier's] invention installed on a typical door or window jamb, the jamb being sectioned on a horizontal plane located somewhat about the horizontal plane through the two plate-securing screws, and also showing, in phantom, a portion of a door . . . with a lock, lock lever and latch hook, the latch hook being in register with the central aperture in the strike plate, the position of the lock lever and latch hook in locked mode being shown in broken line.

(Collier, col. 2, ll. 25-35.) Collier teaches that the

strike plate construction of the invention, generally designated by the reference numeral 11, finds its greatest utility in conjunction with a sliding closure, such as a sliding glass door . . . installation 12, in which a sliding vent 13 provided with a lock stile 14 moves toward or away from a lock jamb structure 16 as the vent is closed or opened.

In most such installations, the lock jamb structure 16 comprises an extruded metal lock jamb 17 appropriately secured to a vertical wooden jamb 18 . . . forming a part of the closure frame. Such construction is conventional and therefore requires no detailed description.

(Collier, col. 2, l. 65 - col. 3, l. 9.)

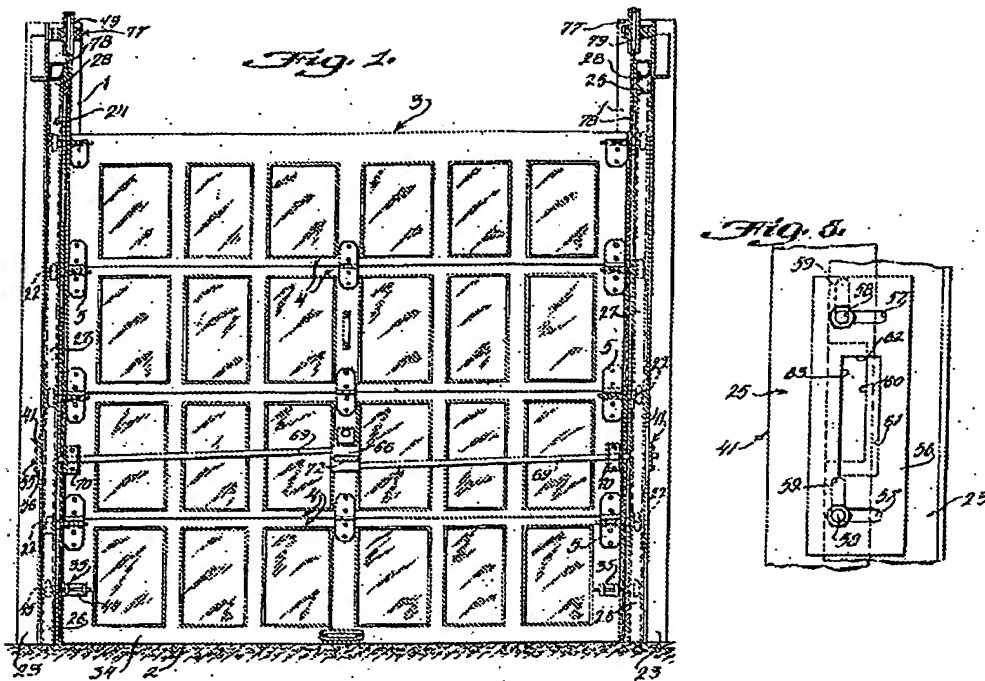
4. The Examiner finds that Collier teaches “an adjustable door guide latch slot assembly comprising a striker plate (21) having a latch opening (26), and a door guide” (Ans. 3). The Examiner finds that “[t]he door guide has a channel sized to retain a door therein that includes an inner surface and an opening. The opening of the door guide is larger than the opening of the striker plate” (*id.*). The Examiner finds that “[t]he striker plate may be adjustably affixed directly to the door guide inner surface so that the striker plate latch opening aligns with the latch of the door” (*id.*). In addition, the Examiner finds that Collier teaches that the assembly “comprises a recessed area on the door guide inner surface that is large enough so that the striker plate may be placed flat within said recessed area” (Ans. 4).

5. The Examiner finds that

Collier fails to disclose that the door guide is adapted to retain the door such that the door can move slidably along the door guide when the door is retained. Collier discloses that the door guide retain the door, however the door will not slide along the door guide because the door used in the device described by Collier is a sliding door, not a rolling door.

(*Id.* at 3-4.)

6. Bagley’s “invention relates to a manually operated closing and locking device for overhead garage doors” (Bagley, 1: col. 1, ll. 1-3). For clarity, we reproduce Bagley’s figures 1 and 5 below:



“Figure 1 is a side elevation of . . . [Bagley’s garage] door” (Bagley 1: col. 1, ll. 37). “Figure 5 is a front elevation of the keeper plate” (Bagley 1: col. 1, ll. 44-45). Bagley teaches that “[i]n installing the invention, the rollers 22 are arranged to travel in the pair of guide tracks so that the panels may be flexed relative to each other and caused to travel horizontally and vertically” (Bagley 2: col. 1, ll. 34-38).

7. The Examiner finds that Bagley “teaches that it is well known in the art to have a door guide (23) adapted to retain a rolling door (4 with the wheels) such that the rolling door can move slidably along the door guide when the door is retained having a similar latch mechanism” (Ans. 4).

8. Claim 11 depends from and further limits the assembly of claim 1 to further comprise a security device affixed to the adjustable striker plate to accommodate the position of the door latch. Claim 11 further requires that the security device has a latch port for accepting the door latch.

9. Claim 19 is drawn to an adjustable door guide latch slot assembly for aligning a slidable door latch with a fixed door guide. The assembly of claim 19 comprises three elements: (1) a striker plate; (2) a door guide; and (3) a security device.

Claim 19 requires the striker plate to have a latch opening.

Claim 19 requires the door guide to be adapted to retain a door therein such that the door can move slidably along a length of the guide when the door is retained in the guide. In addition claim 19 requires the door guide to include (1) an outer and an inner surface, wherein the inner surface has a recessed area larger than the striker plate, and (2) an opening that extends from the inner surface to the outer surface, wherein the opening is larger than the striker plate latch opening.

Claim 19 requires the security device to extend out from the outer surface of the door guide and have a latch receiving port.

In addition, claim 19 recites, but does not require, an arrangement of the assembly, wherein the striker plate *may be* placed flat against the door guide inner surface within the recessed area and *may be* adjustably affixed to the inner surface of the door guide so that the striker plate latch opening aligns with a slidable door latch. According to claim 19, in this arrangement, the security device is affixed to the adjustable striker plate so that the latch receiving port aligns with both the striker plate latch opening and the slidable door latch.

10. Roth teaches a "latch or bolt monitoring device which has a rectangular housing open on one side to admit the latch or bolt" (Roth, col. 2, ll. 29-31).

11. The Examiner finds that "Roth teaches that it is known in the art to have a security device in combination with a latch slot assembly" (Ans. 5).

PRINCIPLES OF LAW

“In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art.” *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992). On appeal to this Board, Appellant must show that the Examiner has not sustained the required burden.¹

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007).

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

Id. at 1742. It is proper to “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 1741. *See also id.* at 1742 (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”). “In determining whether obviousness is established by combining the teachings of the prior art, the test is what the combined teachings of the references would have suggested to those of

¹ *See* (1) *Ex parte Yamaguchi*, Appeal 2007-4412, slip op. at 5 and 23 (BPAI Aug. 29, 2008); (2) *Ex parte Fu*, Appeal 2008-0601, slip op. at 5 and 20 (BPAI Mar. 31, 2008); (3) *Ex parte Catan*, Appeal 2007-0820, slip op. at 3 and 21 (BPAI Jul. 3, 2007) and (4) *Ex parte Smith*, Appeal 2007-1925, slip op. at 4, 9 and 23 (BPAI Jun. 25, 2007). Opinions in support of the decisions in these four appeals are (a) precedential opinions of the Board and (b) available on the USPTO website.

ordinary skill in the art.” *In re GPAC Inc.*, 57 F.3d 1573, 1581 (Fed. Cir. 1995) (internal quotations omitted). Obviousness is viewed through the lens of a person of ordinary skill in the art with consideration of common knowledge and common sense. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006).

“Express suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982); *see also In re Mayne*, 104 F.3d 1339, 1340 (Fed. Cir. 1997) (“Because the applicants merely substituted one element known in the art for a known equivalent, this court affirms [the rejection for obviousness].”). *Accord KSR*, 127 S. Ct. at 1740 (“when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result”).

A reference is said to “teach away” from a claimed invention when it “suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.” 37 C.F.R. § 41.37(c)(1)(vii). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“Any arguments or authorities not included in the brief or a reply brief ... will be refused consideration by the Board, unless good cause is shown.”).

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Collier and Bagley:

ISSUE

Would it have been prima facie obvious to use Collier's latch assembly on Bagley's door?

ANALYSIS

Based on the foregoing evidence (FF 3-7), the Examiner concludes that "[i]t would have been obvious to one having ordinary skill in the art of door latches at the time the invention was made to use the latch mechanism described by Collier with a door that can slide along the door guide, i.e., a rolling door, as taught by Bagley" (Ans. 4).

Appellant provides separate arguments for the following two groups of claims: (I) claims 1, 4, 9, 16, 17, and 22; and (II) claims 2, 3, 5-8, 10, 14, and 15. Claims 1 and 2 are representative. We take each in turn.

Claim 1.

Appellant contends that

Collier is directed to a different problem than that to which Bagley and Applicants' [sic] invention are directed. Specifically, Collier is directed to security hardware for traditional sliding glass door and window installations that have a strike plate located on the jamb of the door or window. Nothing in Collier suggests the desirability of locating the strike plate in a guide channel within which the door or window slides. To the contrary, Collier merely reflects the accepted wisdom that a strike plate for a sliding glass door or window should be located in the jamb, outside of any guide channel. If anything, therefore, Collier teaches away from locating the strike plate in a guide channel within which the door slides.

(App. Br. 7-8.) We are not persuaded.

A reference is said to “teach away” from a claimed invention when it “suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant” *In re Gurley*, 27 F.3d at 553. As the Examiner explains, each of Collier and Bagley teach

a door guide that has essentially the same structure that includes a striker plate that accepts a latch that is mounted on the door. If the door guides are essentially the same in structure, then it is obvious that it could [be] use[d on] any type of door, i.e., that moves horizontally or vertically

(Ans. 7; *Cf.* FF 3, Fig. 1 and FF 6, Fig. 5). “[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *KSR*, 127 S. Ct. at 1740.

We are also not persuaded by Appellant’s contention that in a latch for an overhead door

even slight height variations between the door guide and the overhead door can result in situations where the latch tongue will not line up with the door guide opening. Moreover, a latch mechanism for an overhead door must not interfere with the operation of the door rollers. Such issues are not a concern with a sliding door latch mechanism, which is mounted in the door jamb.

(App. Br. 8.) Variations in the height of the door relative to the door guide relate to the effective installation and operation of the door, not to the latch assembly itself. The same is true with the possibility of the latch mechanism interfering with the operation of the door rollers. With regard to both

contentions, we note that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 127 S. Ct. at 1742.

Lastly, we disagree with Appellant’s contention that “[m]erely because both references show strike plates and the Collier strike plate arguably could be modified for use on the garage door of Bagley is not enough to show obviousness” (App. Br. 9; *see also* Reply Br. 4 (“The mere fact that the prior art could be modified in the manner proposed by the Examiner would not have made the modification obvious unless the prior art suggested the desirability of the modification”)). “Express suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d at 301; *see also In re Mayne*, 104 F.3d at 1340 (“Because the applicants merely substituted one element known in the art for a known equivalent, this court affirms [the rejection for obviousness].”). In this regard, we recognize Appellant’s reference to the Manual of Patent Examining Procedure (MPEP) § 2143.01 (App. Br. 9; Reply Br. 4). MPEP § 2143.01(III) fails to support Appellant’s contention. This section of the MPEP states:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, . . . 82 USPQ2d 1385, 1396 (2007)(“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill”).

(MPEP § 2143.01 (III).) Appellant provides no persuasive evidence or argument that the use of Collier's latch assembly on Bagley's door would not be a predictable variation of prior art elements or would be beyond the level of ordinary skill in this art.

CONCLUSION OF LAW

For the foregoing reasons, we find that the preponderance of the evidence on this record supports a conclusion that it would have been prima facie obvious to a person of ordinary skill in this art to use Collier's latch assembly on Bagley's door.

The rejection of claim 1 under 35 U.S.C § 103(a) as unpatentable over the combination of Collier and Bagley is affirmed. Claims 4, 9, 16, 17, and 22 fall together with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

Claim 2:

ISSUE

Would it have been prima facie obvious to a person of ordinary skill in this art at the time the invention was made to place the striker plate of a lock in a recessed area (e.g., a mortise) of a door guide?

ANALYSIS

Appellant contends that the combination of Collier and Bagley does not teach or suggest . . . a recessed area on the door guide inner surface. On the contrary, as shown in FIG. 4 of Collier . . . the inner surface 23 of the door jamb appears to be flat. Likewise the inner surface of the door guide frame 23 shown in FIG. 5 and 6 of Bagley . . . is flat.

(App. Br. 9.) Stated differently, Appellant's position is that a person of ordinary skill in this art would be unfamiliar with the concept of a mortise (a recessed area) in the context of locks and striker plates, wherein a striker plate is often mortised into the frame of an opening for a lock. We are not persuaded by Appellant's argument. Obviousness is viewed through the lens of a person of ordinary skill in the art with consideration of common knowledge and common sense. *DyStar*, 464 F.3d at 1367. "A court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S. Ct. at 1741. When viewed through the lens of a person of ordinary skill in this art, placing a striker plate flat within a recessed area (e.g., a mortise) of a door guide is nothing more than the exercise of common knowledge and common sense.

CONCLUSION OF LAW

It would have been *prima facie* obvious to a person of ordinary skill in this art at the time the invention was made to place the striker plate of a lock in a recessed area (e.g., a mortise) of a door guide.

The rejection of claim 2 under 35 U.S.C § 103(a) as unpatentable over the combination of Collier and Bagley is affirmed. Claims 3, 5-8, 10, 14, and 15 fall together with claim 2. 37 C.F.R. § 41.37(c)(1)(vii).

Collier, Bagley, and Roth:

Based on the forgoing evidence (FF 3-11) the Examiner concludes that it would have been *prima facie* obvious to a person of ordinary skill in this art at the time the invention was made to include a security device, as taught by Roth, in the latch assembly of Collier for use on a door as taught

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by Bagley “in order to provide verification of the latch bolt being in the proper engaged position, thereby ensuring security to the locking assembly” (Ans. 5).

Appellant provides separate arguments for the following two groups of claims: (I) claims 11-13 and 18; and (II) claims 19-21. Claims 11 and 19 are representative. We take each in turn.

Claim 11:

ISSUE

Does the combination of Collier, Bagley, and Roth teach a strike plate in a guide within which a door slides?

ANALYSIS

Appellant contends that Roth fails to suggest the “desirability of locating the strike plate in a guide within which a door slides” (App. Br. 10). We are not persuaded. For the reasons set forth above, the combination of Collier and Bagley teach this embodiment of the claim.

CONCLUSION OF LAW

The combination of Collier, Bagley, and Roth teaches a strike plate in a guide within which a door slides.

The rejection of claim 11 under 35 U.S.C § 103(a) as unpatentable over the combination of Collier, Bagley, and Roth is affirmed. Claims 12-13 and 18 fall together with claim 11. 37 C.F.R. § 41.37(c)(1)(vii).

Claim 19:

ISSUE

Has Appellant met his burden of establishing that the Examiner's prima facie case of obviousness is in error?

ANALYSIS

Appellant contends that claim 19 "recite[s] a recessed area on the door guide inner surface and 'a security device having a latch receiving port, the security device extending out from the outer surface of the door guide'" (App. Br. 10). Appellant "contends that there is no suggestion or motivation to combine the teachings of Collier, Bagley and Roth to achieve the door guide latch slot assembly of claim[] 19" (*id.*).

Appellant has simply stated what claim 19 recites and concludes that the combination of Collier, Bagley, and Roth fails to teach the claimed guide latch slot assembly. We are not persuaded. "A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim." 37 C.F.R. § 41.37(c)(1)(vii).

CONCLUSION OF LAW

Appellant failed to meet his burden of establishing that the Examiner's prima facie case of obviousness is in error.

The rejection of claim 19 under 35 U.S.C § 103(a) as unpatentable over the combination of Collier, Bagley, and Roth is affirmed. Claims 20 and 21 fall together with claim 19. 37 C.F.R. § 41.37(c)(1)(vii).

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TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

cdc

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